Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

CONSTANCE KRAJICEK,
Petitioner

v.

K. M. JUSTIN, JAMES SHEEHY,
DAVID BRECK, ROBERT TEMPLIN

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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UNITED STATES SUPREME COURT
WASHINGTON, D.C.

Rule 14.1.(a):

PRELUDE TO QUESTIONS

Three judges and one person, functioning illegally as a magistrate, are involved in a conspiracy to deprive Petitioner of her constitutional rights. The "magistrate" and two of the judges functioned without jurisdiction. The third judge sued in United States District Court to have part of the Michigan Constitution declared unconstitutional. They have violated Petitioner's rights under the First, Fourth, Fifth, Sixth, Seventh, Eighth, Fourteenth Amendments to the United States Constitution, Miranda Law and 42 USC §1983, §1985 (2) and (3) and §1986

Questions Presented for Review:

1. Do state district court judges have **jurisdiction** to hear cases when the cases involve monetary amounts greater than state law permits?

2. When a person, too old to be appointed to the position of "judge" by the Michigan state constitution, accepts appointment as a judge, does he have **jurisdiction** to so function?

3. When a judge sues in the United States District Court to have part of the Michigan Constitution declared unconstitutional, does he have **jurisdiction** as a judge, in circuit court?

4. Does someone have **jurisdiction** to function as a magistrate because he has the same last name as a legitimate magistrate but has no

personal bond as state law requires?

5. Do judges forfeit or surrender **jurisdiction** when they knowingly and willfully violate the constitution and laws of the United States?

6. Has the United States Congress ever passed any legislation granting **immunity** to judges?

7. Do judges retain **"immunity"** from tort liability under Title 42 §1983,when they willfully and intentionally violate defendant's constitutional rights?

8. Does a judge have **"immunity"** if he sues to have part of a constitution declared "unconstitutional"?

9. Do judges of a state circuit court retain **"immunity"** when, according to the Michigan Constitution, they are functioning without any **jurisdiction**?

10. Does a person have **"immunity"** when without **jurisdiction**, he functions as a magistrate?

11 Can a judge, suing to have part of a constition declared "unconstitutional", be trusted to protect the constitutional rights of a litigant?

12. Do judges have the right to "immunity" when they function as follows: **"I can do anything I wish to you and you cannot touch me"?**

Rule 14.1.(b)

List of All Parties

All parties to the proceeding in the court whose judgment is sought to be reviewed are listed on the caption of the case.

Rule 14.1.(c)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Constance Krajicek prays that the Court issue a writ of certiorari to review the judgments of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decisions of the United States Court of Appeals

for the Sixth Circuit are set forth in the Appendix, the first order, filed March 31, 1999 on Pages **A-1 through A-4** and the second order, filed April 30, 1999, on Page **B-1.**

JURISDICTION

Jurisdiction in this case, as shown in **Rule 10.(a)** of the Supreme Court Rules, exists because a United States Court of Appeals has entered a decision in conflict with the decision of other United States Courts of Appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, in the issuance of its orders of March 31, 1999 and April 30, 1999,. as to call for an exercise of this Court's supervisory power, See Appendix **C-6** partial verbatim quote of Rule 10(a)

CASE LAW, CONSTITUTIONS, STATUTES INVOLVED

Mann v Conlin, 22F3d 100 (1994), n6 and n9 shows lack of immunity. See quote in Appendix **C-14.**

United States Constitution Article III, Section I. Article VI, Paragraph 2; Article VI, Paragraph 3 and First Amendment. See Appendix **C-1**

United States Constitution, Fourth, Fifth, Sixth amd Seventh Amendments. See Appendix **C-2.**

United States Constitution, Eighth and Fourteenth Amendments and 28USC 144 and MCR 2.003. See Appendix **C-3.**

42 USC § 1983 and 42 USC § 1985 (2). See Appendix **C-4.**

42 USC § 1985 (3) and 42 USC §1986. See Appendix **C-5.**

Michigan Constitution Article I § 2 and § 5. See Appendix **C-6**

Michigan Constitution, Article I § 11, § 14, § 16, § 17 and § 20. See Appendix **C-7**

Michigan Constitution, Articles VI §1, § 18, and § 19(3); Article VII § 6 and Article XI § 1. See Appendix **C-8.**

MCLs 600.1821(4), 600.3101, 600.6501 and 6521; See Appendix **C-9.**

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Opinions of the Attorney General for Michigan #86 and 5226 of 1977. See Appendix **C-11**

STATEMENT OF THE CASE

Rule 14

(d.) The United States Court of Appeals for the 6th Circuit in finding against this Petitioner, cited *Mann v Conlin,*22 F3d 100 (1994)n6, n9 Appendix **C-14**; *Mireles v Waco,* 509 U.S. 9 (1991) Appendix **C-22**; *Stump v Sparkman,* 435 U.S.349 (1978)Appendix **C-13**; *Maki v Laakko,* 88 F3d 361 (6th Cir 1996) n 7.5(1) Appendix **C-16**; all of whom, this Petitioner had used in her transmittal to the United States District Court Eastern Division and the

United States Court of Appeals for the 6th Circuit, to prove her position, that judges functioned without jurisdiction and in violation of the United States Constitution and Federal Laws as well as the Michigan Constitution and Michigan state laws, all of which the United States Court of Appeals for the 6th Circuit distorted in its orders, solely for the purpose of exonerating the judges from responsibility for their illegal acts. In addition, the Court used *Ireland v Tunis,* 113 F3d 1435, 1440-43 (6th Cir) Cert.Denied, 118 S Ct. 560 (1997)(Appendix **C-23)** which also bore out this Petitioner's position and *Cox v Consentino,* 876 F2d 1, 2, (1st Cir 1989)(per curiam), which is totally inapplicable. The Court also said that to qualify for §1983 and §1985 (3) claim, one must be a member of a "group", which is not true. The law clearly reads "any person or class of persons". Appendix **C-4 and C-5** Further, the court claimed that this Petitioner had filed a claim under 18 § 241 and §242, which is false. With the memory of the erroneous decision of the 6th Circuit in the Lanier case in mind, Petitioner pointed out to the 6th Circuit Court, that it was within their purview to to cite these malefactors under those laws.

(e) The orders being appealed from were the denial of a final order and denial in the order resulting from a rehearing.

i. The first order being appealed from was filed on March 23, 1999, Appendix **A-1 to A-4.**

ii. The date of the order resulting from the rehearing was filed on April 30, 1999, Appendix **B-1.**

iii. N/A Not a cross petition.

iv. The decision of the United States Court of Appeals for the 6th Circuit which is the basis for this Plea for Certiorari, is a final order which defies common sense, the Law and the United States Constitution and was timely filed, in conformance with the requirements of this United States Supreme Court.

v. N/A Petitioner's complaint does not call into question the constitutionality of any law. What she complains about is courts' cavalier excusing judges from responsibility for their willful disregard for the United States Constitution and the Laws of this Country and they are violating their oaths of office by so doing.

LACK OF JURISDICTION

Three of the men involved totally lacked jurisdiction, as follows:

1. *K.M.Justin* lacked jurisdiction for the reason that a.) he is not a magistrate, Robert Justin is a magistrate, not K. M. Justin; see Appendix **C-12** b.) magistrates require a PERSONAL bond to be posted BEFORE taking the position and he had none, see Appendix **C-12** and *OAG 5226, 1977-1978* of September 15, 1977, see Appendix **C-11** and c.) he was in a definite conflict of interest where this Petitioner is involved, since he had assisted his son for three years in the illegal use of this Petitioner's land.

2. *James P. Sheehy* lacked jurisdiction in the mortgage foreclosure case because he is a judge in the 52/3 District Court where the maximum jurisdiction is **$10,000.00** and the house involved was worth a minimum

of **$256,000.00 plus the lot**; and mortgage foreclosures are in the jurisdiction of a Circuit Court. Michigan Constitution, Article VI, §1,see Appendix **C-8;** MCL 600.151, MCL 600.3101, MCL 600.6501, MCL 600.6521, see Appendix **C-9;** *Adamski v Cole* 494 NW 2d 794, 197 Mich App 124 (1992), see Appendix **C-13**

3. *Robert Templin* lacked jurisdiction; he was retired as overage to seek election or appointment but accepted an unconstitutional and illegal appointment to such position; because of the problems of keeping him awake, as well as his willingness to be "used" by Oakland County, he accepted after being unqualified to seek election or such appointment, according to Michigan Constitution Article VI, §19 (3), see Appendix **C-8** *Hackett v Kress,* 133 NW 2d 221, 1 Mich App 6, and *Ball v Thomas,* 133 NW 2d 218, 1 Mich App 1 (1965) see Appendix **C-13**; *Mann v Conlin,* 22 F 3d 100 (1994) N 6 and N 9; see Appendix **C-14** and *Stump v Sparkman,* 435 U.S. 349 (1978), see Appendix **C-13** and OAG (MI Attorney General Opinion) 86 of April 5, 1977, see Appendix **C-11**

4. *David Breck,* in suing in the United States District Court to have a part of the Michigan Constitution declared unconstitutional, by calling it "a state law" has sought to misinform the court and demonstrated a contempt for both the Michigan Constitution and the United States District Court and violated his oath of office, wherein he swore to uphold the Constitution of the United States and the State of Michigan. He has forfeited his jurisdiction in Circuit

Court. *OAG 86 of 1977-1978*, of April 5, 1977, see Appendix **C-11** (above)

UNITED STATES CONSTITUTION VIOLATIONS

FIRST AMENDMENT Appendix **C-1**

5. *James P. Sheehy* denied Petitioner a.)the right to address the illegal foreclosure of her house, in one case, then b.) denied her the right to question witnesses in another.

6. *Robert Templin* denied Petitioner the right, in her appeal, in the Circuit Court, to address the illegal conviction obtained by the acts of Sheehy in 52/3 District Court.

7. *David Breck* denied Petitioner the right, in her appeal of acts of *James P. Sheehy,* to petition the Michigan Court of Appeals by failing to sign an appealable order then backdating it when he finally signed it, making it impossible for Petitioner to file a timely appeal. Michigan Constitution Article I §5, see Appendix **C-6 and C-7**

FOURTH AMENDMENT Appendix **C-2**

8. There was no PROBABLE CAUSE for the issuance of the warrant (see Conspiracy 42 USC §1985, which follows), which was shown to *Justin, Sheehy and Breck.*

9. *K.M.Justin*, even if he had had jurisdiction, violated Petitioner's rights in issuing a warrant against her, then refused to quash it when issuance was without a sworn statement or ticket issued to validate it and based solely on a hearsay allegation of Oakland County Sheriff deputy who admitted it was from hearsay. It stated only the law under which Petitioner was charged but did not state what

Petitioner was supposed to have done. *People v Heffron,* 19 NW 170, 53 Mich 529. See Appendix **C-14.**

10. *James P. Sheehy,* functioning without jurisdiction violated Petitioner's rights further, when he refused to quash the warrant which had been issued without any sworn statement or ticket to validate it.

11. *David Breck,* functioning with questionable jurisdiction, violated Petitioner's rights when she appealed Sheehy's order to Oakland County Circuit Court, when he refused to quash the same warrant. Michigan Constitution, Article I §11, Appendix **C-7;** Michigan Compiled Laws 764.9d (2); Appendix, **C-10 and C-11.** *People v Quinn,* 356 NW 2d 10, 136 Mich App 145, see Appendix **C-14.**

FIFTH AMENDMENT Appendix **C-2**

12. *James P. Sheehy* violated Petitioner's rights when he a.) denied Petitioner's rights to a fair and impartial trial in the seizure of Petitioner's house; b.) when he sought to go forward with a case before receiving the order resulting from Petitioner's appeal in the Circuit Court in another case **#7** above; c.) denied Petitioner's motion for discovery of Pro- secutor's evidence; d.)deprived Petitioner of due process of law by denying her a jury trial in another case and e.) sought to go forward with a retrial of a case in which Petitioner had obtained a conviction reversal in the Circuit Court and the reversal was upheld in the Michigan Court of Appeals. (When the case was finally transferred to ano- ther judge, he dismissed it WITH PREJUDICE.)

13. *David Breck* denied Petitioner's appeal of the order

of *James P. Sheehy*, thereby accepting the responsibility for the same misdeeds as *James P. Sheehy* **#12.c.** above Michigan Constitution Article I §17,Appendix **C-7** *Brady v Maryland,* 373 U.S.83, 10 L Ed2d 215, 83 S.Ct 1194 (1963), Appendix **C-15**

SIXTH AMENDMENT Appendix **C-2**

14. *K. M. Justin,* (even if he had had jurisdiction) denied Petitioner's rights by his denial of Petitioner's motion to quash the warrant because it merely stated the law under which Petitioner was being charged; *People v Quinn,* Ibid., Appendix **C-14**; for his denial of her motion for a complete statement of the nature and cause of the charge; for his denial of her motion as an indigent, requesting a court appointed attorney.

15. *James P. Sheehy* misused the phrase "the right to a speedy trial" to justify going forward with the theft of this Petitioner's house when she had had only 16 hours notice of the case and denied her motion when she attempted to request an order transferring the case to Circuit Court; then in another case, when he was attempting to retry the case where the conviction had been overturned by the Michigan Court of Appeals, waited 209 days to attempt reprosecution, thereby making a mockery of the phrase "the right to a speedy trial". (When that case was finally assigned to a different judge, the different judge dismissed it "with prejudice", thereby showing that *Sheehy's* willingness to go forward was not legal.) **#12e** above

16. *James P. Sheehy*, in the matter of the theft of Peti-

tioner's house, denied Petitioner the right to a jury trial even though the court's order to appear dictated "You are entitled to have a jury trial."

17. *James P. Sheehy,* refused to order a sheriff's deputy to answer Petitioner's questions, when the deputy displayed a "selective memory" (See Conspiracy). Instead, he said "Go pay the eighty bucks", without ever giving any oral decision in the case.

18. *James P. Sheehy* denied Petitioner's motions for a right to discover Prosecutor's evidence; he denied Petitioner's motion for court appointed attorney; he denied Petitioner's motion for a complete statement of the nature and cause of the charge; when Petitioner refused to plead to a charge, about which she knew nothing except the law under which she was being charged, he sought to enter a plea of guilty until she demanded that it be otherwise.

19. *David Breck*, acting as appellate court judge, denied Petitioner's motion for court appointed attorney, denied Petitioner's motion for complete statement of nature and cause; denied Petitioner's motion for right to discover Prosecutor's evidence; permitted only a plea of "not guilty" by Petitioner.

20. *Robert Templin,* illegally acting as appellate court judge, denied Petitioner's appeal, refused to permit her to address the illegal conviction, saying only, "I'm going along with Judge Sheehy on this."Michigan Constitution Article I §20; Appendix **C-20** *Edmond v Collins,* 8 F3d 290 (5th Cir. 1993) *and U.S. v Brumel Alvarez,* 976 F 2d 1235 (9th Cir 1992); all other *"Brady" case law.* Appendix

C-15 *Young v Duckworth,* 733 F2d 482 (7th Cir 1984) Appendix **C-14**(for all 14-20 above)

SEVENTH AMENDMENT Appendix **C-2**

21. *James P. Sheehy* denied Petitioner the right to a jury trial in the matter of the illegal foreclosure of her house, though the document she had been given stated "You are entitled to a trial by jury"; case involved more than $250,000, when he had no jurisdiction to handle the case.

22. *James P. Sheehy* denied Petitioner the right to a jury trial in the illegally issued ticket (see Conspiracy); but in the notice of trial had stamped on it "Be prepared to pay fines and costs on that date", indicating a predisposition to find Petitioner guilty.

23. *Robert Templin,* by "going along with Judge Sheehy on this", also denied Petitioner the right to a jury trial.Michigan Constitution, Article I §14 Appendix **C-7**

EIGHTH AMENDMENT Appendix **C-3**

24. *K. M. Justin,* even if he had had jurisdiction, had required Petitioner to post a bond at the time of the issuance of the illegal warrant. When Petitioner appeared before him, as required (a day ahead of required time) increased the bond and had her incarcerated until a friend could bring more money. By having her placed in the same cell as the one in which she had been beaten by Oakland County Sheriff deputies on the occasion of her previously overturned incarceration (Sixth Amendment above), caused her severe trauma and fear.

25. *James P. Sheehy*, as instigator of the increase in Petitioner's bond (which *Justin* and *Sheehy* admitted), was responsible for the excessive bond and the cruel and unusual punishment which Petitioner was forced to endure. Michigan Constitution Article I §16 Appendix **C-7**

FOURTEENTH AMENDMENT Appendix **C-3**

26. Each and every act of *K.M.Justin, James P. Sheehy, David Breck and Robert Templin,* were acts designed and intended to violate Petitioner's rights under the Fourteenth Amendment, since Petitioner most assuredly was not given "Equal protection of the law". Also, Michigan Constitution of 1963, Article I § 2;Appendix **C-6**;*U.S. v Olin Corp., D.C.N.Y.1979 465 F. Supp. 1120* Appendix **C-15**

FEDERAL LAWS VIOLATIONS
MIRANDA LAW

27. *K. M. Justin,* even if he had had jurisdiction, violated the Miranda Law when he refused Petitioner the right to a court appointed attorney when she appeared before him, as an indigent person.

28. *James P. Sheehy* violated the Miranda law when he denied Petitioner's motion for a court appointed attorney because of her indigency.

29. *David Breck* violated the Miranda law when he denied Petitioner's motion for a court appointed attorney, both in his court and on her motion for such in 52/3 District Court, as appellate judge. Michigan Constitution Article I §20 Appendix **C-7**

28 USC § 144, MCR 2.003 Appendix **C-3**

30. *K. M. Justin* refused to recuse himself despite the fact that for at least three years he had been abetting his son in the illegal use of Petitioner's land, which constitutes a blatant conflict of interest.

31. *James P. Sheehy, David Breck and Robert Templin* all cases in which they were involved against Petitioner,denied Petitioner's motion for recusals and change of venue because of her inability to obtain a fair hearing in Oakland County courts 28 USC § 144 MCR 2.003 Michigan Compiled Laws 762.7, Appendix **C-10;** *In re Attorney General* 341 NW 2d 253, 129 Mich App 128 (1983); Appendix **C-15**

CONSPIRACY

42 USC § 1983; § 1985 (2) and (3); § 1986

32. This conspiracy against Petitioner began when she started investigating the Oakland County Sheriff's department activities after sheriff's deputies had stolen her car using falsified documents..She discovered a car theft ring being operated by sheriff's deputies. When she reported it to the Oakland County Sheriff, neither he nor the Internal Affairs Div. would do anything about those thefts. To quiet Petitioner, deputies beat her up in the holding cell at 52/3 District Court with threats of more serious damages if she did not quit. Petitioner sued sheriff and some deputies. That case is now at the United States Court of Appeals, Sixth Circuit and will probably be adjudged by Judge Boggs (currently acting as chief judge), whose decisions have shown a lack of regard for the United

States Constitution, where misdeeds of judges are involved

To protect the Sheriff, Oakland County offices have "Circled the Wagons". It starts with the Oakland County Executive whose ex-partner in a law firm (from which the executive had to resign when elected to office) has represented these four persons and the entire sheriff department The nephew of the County Executive is in the employ of the ex-partner and has actively represented Oakland County judges and sheriffs. Though state law permits such expenditure by the county in behalf of these individuals, it violates the Michigan Constitution of 1963, Article VI § 18 and Article VII §6. Appendix **C-8**

Involved, also, in the conspiracy, is the Oakland County Prosecutor, Oakland County Corporation Counsel (which pays the legal bills for these persons), Oakland County judges and even the Oakland County Register of Deeds (who refused to record a judgment for Petitioner, against a deputy sheriff).

33. *James P. Sheehy* first demonstrated his involvement in the conspiracy when he, somehow, gained control of all four cases involving this Petitioner, when two of them had been assigned to other judges.

34. *James P. Sheehy*, using the services of Oakland County Sheriff deputies and knowing that Petitioner was a subpoenaed witness in a case before him (where he did not want a witness to protect a defendant), advised Oakland County Sheriff that Petitioner was to be in his courtroom at 1:15 P.M. on a certain day in April of 1997. Deputy Stout waited, illegally, in the parking area of a

church on Clarkston Road, until Petitioner passed by him. Petitioner, following her usual route, turned right onto Joslyn Road and proceeded southerly until stopped by an Oakland County police car, driven by Deputy Ryan, blocking the road. Deputy Rathbun, driving north on Joslyn, made a U-turn and pulled in behind Petitioner. Then Deputy Stout, in a third police car pulled up alongside of Petitioner on her left, completely surrounding her when one considers the white posts on the right side of her car (protecting cars from the lake). They detained her for 24 minutes, which made her too late to witness in the case before *Sheehy*. To validate having stopped her, Rathbun gave her a ticket for "Improper Passing". See numbers **4**.b.), **5., 11.**d.),**16., 19., 21.** and **22.** above. Michigan Compiled Laws 600.1821 (4) Appendix **C-9** *Detroit Branch, N.A.A.C.P. v City of Dearborn* (1988), 434 NW 2d 444, 173 Mich App 602; Appendix **C-14**

In the matter of a **LACK OF PROBABLE CAUSE** for issuance of any warrant against Petitioner, the Deputy sheriff who wrote a police report against this Petitioner, based his "Report" on an alleged "incident" on Clarkston Road, in Orion Township, at 1:15 P.M. August 26, 1997. At that time, this Petitioner was in West Bloomfield, which is at least 22 miles away. Though Petitioner had three witnesses to prove where she was at that time, she was not permitted to have them testify under oath, before *Justin, Sheehy* or *Breck*.

35. The description of a driver of the "offending vehicle" given by Deputy Newkirk does not even vaguely

resemble this Petitioner. The only "source" of information he claimed to have was the license number GCL 924, which is a vehicle not owned by Petitioner. IF this were not a "frame-up", Deputy Newkirk could not have identified Petitioner from that license number. The intent was to use any method to deprive Petitioner of her driver's license because Deputy Newkirk referred Petitioner to the Secretary of State for a "reexamination", and providing an address where Petitioner had not lived in over eight years to prevent Petitioner's receipt of the notice of reevaluation with a resultant suspension of her license according to Michigan Law. (Because Post Office personnel knows Petitioner, they delivered notice to her at her address).

When the Secretary of State after mental, vision and physical examinations declared Petitioner to be "okay to receive a Michigan driver's license", the sheriff, aware that Petitioner had been approved, sent a scurrilous letter to Florida Driver's Bureau, claiming that Petitioner had serious mental and visual problems and fell asleep at the wheel and provided Florida with the same fallacious address, knowing Petitioner would not receive notice of any action.. Florida, unaware of Oakland County's intent, and unable to reach Petitioner, suspended her license for six months before she found out about their act, at which time, she immediately provided them with the same information she had given the Michigan Secretary of State and after examination of the doctors' reports about her, they advised her she was approved for a Florida license. They were so embarrassed and anxious to rescind that order,

they were most apologetic during the course of two phone calls which they initiated to this Petitioner..

Since Petitioner provided all these same proofs to *Justin, Sheehy* and *Breck* (as well as more proofs not applicable here), and all three refused to quash the warrant, when they were, all three, aware of the truth of her presentation, it is self-evident of their inclusion in the conspiracy. Since the police report was a false document and the subsequent testimony of the sheriff's deputy was full of perjurious statements, anything after that was the "fruit of the poisonous tree" and cause for dismissal, which these two judges and the phoney magistrate all knew. *People v Plyler*, 272 NW 2d 623, 86 Mich App 272; *People v Tucker*, 172 NW 2d 712, 19 Mich App 320 (1969) Appendix **C-16**

36. *Robert Templin* was not the first judge to be assigned the appeal of the case shown in **34.** above. Oakland County first attempted to assign it to Judge Kuhn, (until now, he has been an honest judge and was the Circuit Court judge who had given this Petitioner the reversal of the first illegal conviction whose decision was affirmed in the Michigan Court of Appeals) who refused to get involved because the sheriff was still under a contempt of court order for his refusal to return incarceration documents to this Petitioner; (which she still does not have). They then attempted to assign it to Judge O'Brien who promptly retired as a judge rather than get involved in the conspiracy. Then Judge Gilbert, who knows from prior cases, this Petitioner will not tolerate illegal acts,

refused it. Only then was *Templin*, illegally, assigned to handle the appeal. **5., 11.**d.), **19.**, and **22.** above *Maki v Laakko*, 88 F3d 361 (6th Cir.1996) N7.5 (1); *Strength v Hubert*, 854 F2d 241 (11th Cir 1988); *U.S. v Sneed*, 34 F3d 1570 (10th Cir 1994) Appendix **C-16**

LACK OF IMMUNITY

To the best research by this Petitioner, there has never been any law passed by the Congress of the United States granting any kind immunity to judges, except for what might be involved in 42 USCA §2000aa-6 (c) Appendix **C-6** but even there, there is the qualification "within the scope ... of their office". All case law to follow had been presented to the United States Court of Appeals, 6th Circuit. In fact, just theopposite of that Court's presentation and orders have been true:

When the founding fathers wrote the constitution, for the United States, they recognized the fallibility of human beings, even judges. *United States Constitution*, Article III, Section 1; Article VI, Paragraphs II and III. Appendix **C-1**

In *Marbury v Madison*, 5 US 137 (1803)(Cranch) Chief Justice Marshall stated firmly that courts are bound by the United States Constitution. Appendix **C-17**

Then in *Mc Culloch v State 17 US 316 (1819)*, he again stated that the United States Constitution is the supreme law of the land. Appendix **C-18**

Further, in *Mayor, Aldermen and Commonalty of City of New York v George Miln* 36 US 102 (1837) Justice

Barbour expressing the opinion of the court, indicated that jurisdiction is "surrendered or restrained" by the Constitution of the United States"

Those three cases establish the requirements of a court, i.e. the United States Constitution is the supreme law of the land, the courts are bound to honor it as such, acts inconsistent with the Constitution are void and that jurisdiction is surrendered when attempts are made to circumvent the Constitution. However, at that time, no particular penalties were attached to misdeeds by judges, other than existed in the United States Constitution, Article III. Appendix **C-1.**

Then, in 1866 and 1871, Congress declared that immunity for judges who violate the Constitution of the United States in their decisions are subject to sanctions. At first the sanctions were in the form of criminal sanctions.*Congress Globe, 39th Congress,* Appendix **C-18, C-19** They were then modified as civil sanctions *Congressional Globe, 42nd Congress* Appendix **C-19, C-20.**

Even here, in Michigan, the Michigan Supreme Court ruled that part of the act which granted total immunity to any or all governmental officials, (including judges) was unconstitutional. M.C.L. 691.1407 Appendix **C-10**, 14 *Maki v East Tawas,* 188 NW 2d 593, 385 Mich 151 (1971) and *Jackson v City of Detroit,* 192 NW 658, 35 Mich App 591 (1971)Appendix **C-20**

Though the courts have ruled that there is no immunity where there is no jurisdiction, the United States Court of Appeals for the 6th Circuit, under the current direction

of Judge Boggs (acting chief judge), ignored that fact in his findings against this Petitioner. The case law he used to attempt to validate his decision (with the assistance of two other judges), were issued by the Sixth Circuit (and some were case law involving his own past decisions)and included only one case law from one other circuit, inapplicable to Petitioner's case.

Because of the corruption prevalent in Oakland County government, where all divisions, including all but three Circuit Court judges [Kuhn, Tyner and Mc Donald] function under the premise of **"I CAN DO ANYTHING I CHOOSE TO YOU AND YOU CAN'T TOUCH ME. I'M IMMUNE FROM CLAIMS"**, this Petitioner has researched "immunity" from 1216 (when King John to retain his throne, agreed to the terms of the Magna Carta and in return, received the assurance of the controlling barons of "The King Can Do No Wrong", which, however, were it written in present day English, would be "The King MAY do no Wrong") to the present but has not included those areas where it would not be applicable and her results follow: *Magna Carta of 1216;* Appendix **C-17.**

As a result of confusion developed over the years, it became necessary to reestablish immunity, which was done *Floyd and Barker,* 77 Eng Rep 1305 (Star Chamber 1607). Appendix **C-17.**

Corruption resulted as a result of the decision of 1607 and resulted in the *English Declaration of Rights of 1689.* Appendix **C-17.**

When the founding fathers composed the Constitu-

tion of the United States, they still had fresh in their memories, the corruption of the king's court, as it had been applied to them. They injected into the Constitution what they thought would be sufficient protection against it. *United States Constitution, Article III and Article VI, Paragraphs 2 and 3.* Appendix **C-1.**

But judges became more interested in protecting bad decisions than justice, which precipitated the statements by then Chief Justice Marshall, which have never been abrogated. *Marbury v Madison,* 5 U.S. 137 (1803)(Cranch) and *Mc Culloch v State,* 17 U.S. 316 (1819), Appendix **C-17.**

Things were quiet for a while until the matter of shipping got involved then Justice Barbour found it necessary to state that any decision outside the United States Constitution was void and that where such occurred, jurisdiction was forfeited. Though certain judges have ignored his statements, they have never been abrogated. *Mayor, Aldermen and Commonalty of City of New York v George Miln,* 36 U.S. 102 (1837). Appendix **C-18;**

As a result of ongoing violations of the constitution by some judges, the United States Congress found it necessary to get involved. *Congress Globe, 39th Congress,* First Session, (1866) (President Johnson, Representative Lawrence, Senator Trumbull) Despite the veto of President Johnson, it became law, proving the indignation of Congress and was for criminal responsibility. Appendix **C-18 and C-19**;

As a result of outside pressures, the Congress deci-

ded to alter the criminal charges to be civil, through legislation. *Congressional Globe, 42nd Congress,* First Session, (1871) (Representative Arthur, Senator Shellabarger) Appendix **C-19 and C-20**.

Though there were intervening cases, the next case which had a defnite bearing on "immunity", it was *Pierson v Ray,* 386 U.S. 547 (1967) Appen*dix* **C-20**.

In 1973, two things occurred, having a bearing on "Immunity". First there was the dissertation by scholars which produced *Federal Courts and Federal System,* 336 2d ed, 1973 Appendix **C-13**;

The other was the case involving 1983 and 1985.. Though it did not specifically involve judges, it reiterated the supremacy of the Constitution. *Hampton v Chicago,* 484 F2d, 602, 607 (CA7 1973)(J Stevens).Appendix **C-21**

Then the Michigan Supreme Court ruled that immunity was not legislated but had been initiated by judicial officals. *Pittman v City ofTaylor,* 247 NW 2d 512, 398 Mich 41 (1976) Appendix **C-21**.

Since violation of the United States Constitution is not a function normally performed by a judge, the decision of the Supreme Court in 1978, denies immunity to the defendants in this plea for certiorari. *Stump v Sparkman,* 435 U.S.349 (1978)Appendix **C-13**;

There were several cases where "immunity" has been challenged, where officials other than judicial were involved but the one statement about "constitutional norm" is sufficient to prove that these malefactors are to be held accountable for their misdeeds.*George D. Owen v City of*

Independence, Missouri, et al, 445 U.S.622 63 L Ed 2d 673, 100 S Ct. 1398 (1980) Appendix **C-21**; *Hafer v Melo,* 502 U.S.21 (1991); *Blanche Road Corp. v Bensalem Twp.,* 57 F3d, 253 (3rd Circuit 1995). Appendix **C-22 and C-23.**

The Supreme Court of the United States has ruled that a claimant must prove damages. This brief has done that, to a major degree. *Anderson v Creighton,* 483 U.S. 635 (1987);Appendix **C-21 and C-22**

Then there is one case which shows clearly that 1983 is a legitimate vehicle for redress of grievances. See *Harlow v Fitzgerald,* 457 U.S.800 (1982); Appendix **C-22**

Thre ae two cases which absolutely sound the DEATH KNELL of immunity for these malefactors. The. fact that the 6th Circuit Appellate Court attempted to claim that these men had merely "erred", only serves to prove the lack of concern for the Constitution of the United States and the citizens of this country who pay their salaries. See *Forrester v White,* 484 U.S.219 (1988); and *Mireles v Waco,* 502 U.S.9 (1991) Appendix **C-22.**

Even Judge Gadola in the United States District Court, Eastern Division of Michigan ruled that according to Michigan law, immunity can not just be claimed, it must be proven. *Townsend v Hazdroth,* 875 F Supp 1293 (E.D.Mich 1995); See Appendix **C-23**

Though he is not really a magistrate, *Justin,* even if he were a magistrate could claim only "qualified immunity" but with a lack of probable cause, he has none.*Malley v Briggs,* 475 U.S. 335 (1986);Appendix **C-22.**

After due consideration of this brief by this Honor-

able Court, Petitioner feels certain that the injustice she has endured will be corrected.

WHEREFORE, THIS PETITIONER, IN PRO SE, PRAYS THIS HONORABLE COURT WILL GRANT HER PETITION FOR CERTIORARI.

Respectfully submitted,

Constance Krajicek, In Pro Se
P. O. Box 506
Lake Orion, Michigan 48362
1-810-319-6767

Date: September 23, 1999

Supreme Court, U.S.
FILED

99 610 JUL 29 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

CONSTANCE KRAJICEK,
Petitioner

v.

K. M. JUSTIN, JAMES SHEEHY,
DAVID BRECK, ROBERT TEMPLIN

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

APPENDIX

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2647

No. 98-1249

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONSTANCE E. KRAJICEK Plaintiff-Appellant	)	FILED
	)	MAR 23, 1999
		LEONARD GREEN,
v.	)	Clerk
	)	
K. M. JUSTIN, JAMES P. SHEEHY, ROBERT TEMPLIN, DAVID BRECK, Defendant-Appellees	)	**ORDER**

Before BOGGS, CLAY AND GODBOLD,* Circuit Judges

Constance E. Krajicek, appeals pro se from a district court judgment that dismissed her civil rights action under 42 U.S.C. §§1983 and 1985(3), as well as U.S. C. §§ 241-242. Her appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not needed. Fed. R App.P. 34(a).

Krajicek alleged that a state magistrate and three state court judges had conspired to violate her constitutional rights during various judicial proceedings. On February 4, 1998, the district court granted the defendants' motion and dismissed Krajicek's case under

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*The Honorable John C. Godbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation

Fed. R. Civ. P. 12(b)(6). In so ruling, the court held that each of the defendants was protected by absolute judicial immunity. It is from this judgment that Krajicek now appeals, moving for costs against the appellees.

We review the dismissal of Krajicek's case *de novo*. *See Mann v. Conlin*, 22 F3d 100, 103 (6th Cir.), *cert denied*, 513 U.S. 870 (1994)

> [J]judicial immunity is not overcome by allegations of bad faith or malice... Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Mireles v Waco*, 502 U.S. 9, 11-12 (1991) (per curiam) (citations omitted).

Krajicek now argues that juducial immunity does not apply and that the defendants were liable for damages under § 1983 because their actions were unconstitutional. This argument lacks merit because judicial immunity applies even when a judge acts erroneously, maliciously, or in excess of his authority. *See id.* at 12-13; *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978).

Krajicek also argues that the defendants' failure to deny all of the allegations in her complaint shows that they acted in the complete absence of jurisdiction. This

argument is unavailing because the defendants filed a motion to dismiss in lieu of an answer to the complaint. *See* Fed. R. Civ. P. 12(b)(4). Thus, we will not construe their failure

to deny all the allegations in the complaint as an admission under Fed. R. Civ. P. 8(d). Moreover, the district court properly determined that all of the defendants had acted within their jurisdiction under Michigan state law. Consequently, Krajicek's claims were properly dismissed on the basis of judicial immunity. *See Ireland v Tunis*, 113 F 3d, 1435, 1440-43 (6th Cir.) Cert. Denied, 118 S. Ct. 560 (1997), *Mann*, 22 F3d at 104-05.

The dismissal of Krajicek's claim under § 1985(3) was also proper because she did not show that the defendants were motivate by gender bias or some other class-based, invidiously discriminatory animus. *See Maki v Laakko*, 88 F3d 361, 367 (6th Cir. 1996) cert. denied 519 U.S. 1114 (1997). Moreover, the district court properly dismissed the criminal conspiracy claims that Krajicek raised under18 U.S.C. §§ 241-242, as these statutes do not provide a basis for civil liability *See Cok v. Consentino*, 876 F 2d 1, 2, (1st Cir. 1989)(per curiam).

Finally, we note that Krajicek has moved for costs against the appellees that would reimburse her for including certain documents in the joint appendix. This

motion fails because inclusion of the disputed documents was required under our local rules.

Accordingly, all pending motions are denied and the district court's judgment is affirmed Rule 34 (j) (2) (C), Rules of the Sixth Circuit

ENTERED BY ORDER OF THE COURT

/S/ Leonard Green

Clerk

No. 98-1249

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONSTANCE E. KRAJICEK,) **FILED**
Plaintiff-Appellant) **APR 30, 1999**
v.)**LEONARD GREEN,**
K.M.JUSTIN, JAMES P. SHEE-) **CLERK**
HY, ROBERT TEMPLIN, DAVID)
BRECK,) ORDER
Defendant-Appellees)

Before BOGGS, CLAY, and GODBOLD*, Circuit Judges

Constance E. Krajicek moves this court to reconsider its order affirming a district court judgment that had dismissed her civil rights case, filed under 42 U.S.C. §§ 1983 and 1985 (3), as well as U.S.C. §§ 241-242.

Upon review, we conclude that Krajicek has not cited any misapprehension of law or fact that would alter this court's prior decision. *See* Fed. R. App. P. 40(a).

Accordingly, the motion for reconsideration is denied. ENTERED BY ORDER OF THE COURT

/s/ Leonard Green,
Clerk

*The Honorable John C. Godbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation.

(Rule 14, 1.(*i*)(v),(vi)

CITED AUTHORITIES:

United States Constitution. Article III, Section 1:

"... The judges, both of the supreme and inferior Courts shall hold their offices during good behaviour ... "

United States Constitution, Article VI, Paragraph 2:

"The Constitution and the Laws of the United States...which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land, and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary ... "

United States Constitution, Article VI, Paragraph 3

" ... and the Members of the several State Legislatures and all executives and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support the Constitution."

United States Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Appendix C-1

United States Constitution, Fourth Amendment

The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or Affirmation and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fifth Amendment:

... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb,.... nor be deprived of life, liberty, or property, without due process of law; ...

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation to be confronted with witnesses against him, ... and to have the Assitance of Counsel for his defence.

United States Constitution, Seventh Amendment:

... where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, ...

Appendix C-2

United States Constitution, Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

United States Constitution, Fourteenth Amendment:

... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction equal protection of the laws

28 USC 144, MCR 2.003, Michigan Court Rules:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge befoe whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding, which purports to be the basis of Michigan Court Rules, MCR 2.003: (B) A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which (1) The judge is personally biased or prejudiced for or against a party or attorney:

42 USC § 1983:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of an rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC § 1985(2):

If two or more persons in any State or Territory conspire to deter, by force, intimidation or threat; any party or witness in any court of the United States from attending such court or from testifying from any matter therein, freely, fully, and truthfully ... or if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws;

42 USC § 1985 (3):

If two or more persons in any State or Territory conspire ... for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 USC § 1986:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any

number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action

42 USC § 2000aa-6(c)

The United States, a State, or any other governmental unit liable for violations of this chapter under subsections (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer, ,,, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

UNITED STATES SUPREME COURT RULES: JURISDICTION ON WRIT OF CERTIORARI

Rule 10 (a):

a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;... has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Michigan Constitution, Article I § 2

No person shall be denied the equal protection of the law ...

Michigan Constitution, Article I § 5:

Appendix C-6

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right ...

Michigan Constitution, Article I § 11:

The persons, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any any place or seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. ...

Michigan Constitution, Article I § 14:

The right to trial by jury shall remain but shall be waived in all civil cases unless demanded by one of the parties, in the manner prescribed by law

Michigan Constitution, Article I § 16:

Excessive bail shall not be required, ... cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Michigan Constitution, Article I § 17:

No person shall be compelled in any criminal case to witness against himself, nor be deprived of life liberty or property, without due process of law..

Michigan Constitution, Article I, § 20:

In every criminal prosecution, the accused shall

have the right to ... be informed of the nature of the accusation; ... to have the assistance of counsel

Michigan Constitution, Article VI, § 1:

The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish ....

Michigan Constitution, Article VI § 18:

... In any county where an additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein...

Michigan Constitution, Article VI § 19 (3):

No person shall be elected or appointed to a judicial office after reaching the age of 70 years.

Michigan Constitution, Article VII § 6:

... The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody

Michigan Constitution Article XI, § 1:

All officers, legislative, executive and judicial, before entering upon the duties of their respec-

tive offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public post.

MCL 600.151 Same as Article VI § 1 MI Constitution

MCL 600.1821 (4):

All parties, attorneys and subpoenaed witnesses are exempt from arrest while going to, attending and returning from the places they are required to attend.

MCL 600.3101

The CIRCUIT court has jurisdiction to foreclose mortgages of real estate and land contracts.

MCL 600.6501

The provisions of this chapter apply to the district court, to municipal courts and to the common pleas court of Detroit, except as otherwise provided in statutes..

MCL 600.6521:

Except as otherwise provided or limited in statutes specifically applicable to courts of limited jurisdiction, ... the courts have jurisdiction over actions at law, ... where the amounts claimed in the matter does not exceed jurisdictional limits applicable to the courts.

MCL 691.1407 - Governmental Immunity from Tort Liability:-

(2) Except as provided in this section and without regard to the discretionary or ministerial nature of the conduct in question, each officer and/or employee of a governmental agency or its agents shall be immune from tort liabilities for injuries to persons or damages to property, while acting on behalf of a governmental agency, if all of the following are met:

(5) Judges and their staffs are immune from tort liability for injuries to persons or damage to property, whenever they are acting within the scope of their judicial and/or constitutional authority."

MCL 762.7

Each court of record having jurisdiction of criminal cases, upon good cause shown by either party, may change the venue in any cause pending therein

MCL 764.9d (2):

If a complaint is not sufficient on its face, (showing

only the law under which a defendant is charged) and if the court is satisfied that a complaint sufficient on its face cannot be drawn and filed on the basis of the available facts, or evidence, it shall dismiss the complaint.

Opinion of the Attorney General for Michigan:

OAG 86 of April 5, 1977, Constitution of 1963, Article 6, Section 19 which prohiblts the election or appointment to a judicial office after reaching age of 70, does not violate the equal protection clause of the United States Constitution, and is, therefore, valid and is in accord with the decision in Rubino v Ghezzi, 512 F2d 431 (1975)

Opinion of the Attorney General for Michigan:

OAG 5226 of September 15, 1977: As Michigan statutes setting forth bonding requirements for county oficials refer to individual bonds which 'each' officer must obtain and places the duty upon the officer to secure his or her own bond a single surety bond provided by the county covering several or all county officers and employees may not be used in lieu of the various statutory requirements imposed upon county officers that a surety covering faithful performance be furnished.

Letter showing that K.M.Justin is acting illegally as a magistrate in stead of Robert Justin, a magistrate:

State of Michigan (Seal of Michigan)
District Court - 52nd Judicial District
3rd Division - 135 Barclay Circle
Rochester Hills, MI 48307-5800

Honorable James P. Sheehy
Honorable Ralph Nelson
Honorable Julie A. Nicholson
District Judges

December 8, 1997

Mr. Gerald Poisson
Oakland County Corporation Counsel
1200 N. Telegraph Road
Pontiac, Michigan 48341

Dear Mr. Poisson:

Please find enclosed two Summons and Complaints regarding the case of Constance Krajicek vs. K.M.Justin and James P. Sheehy. The complaints were served at this Court on Friday, December 5, 1997. Please note that "K M.Justin" is Robert Justin, a Magistrate in this division.

Please notify me as soon as counsel is appointed. Thank you for your time in this matter.

Sincerely,
/s/ Lynda A. Hammerstein
Lynda A. Hammerstein
Court Administrator

/lah

Appendix C-12

The Federal Courts and the Federal System, 336 2 ed 1973 (by P. Bator, P. Mishkin, D. Shapiro and H. Weschler) by Hart and Weschler:

> "Where constitutional rights are at stake, the courts are properly astute in construing statutes, to avoid the conclusion that Congress intended to use the privilege of immunity to defeat them.

Adamski v Cole 494 NW 2d 794, 197 Mich App 124 (1992)

> Plaintiff filed complaint for land contract forfeiture in district court. Defendant had the case transferred to Circuit Court on the basis that land contract forfeiture was in excess of jurisdictional limits of district court (other claims involved in appeal to Michigan Court of Appeals)

Hackett v Kress, 133 NW 2d 221, 1 Mich App 6 (1965)
Ball v Thomas, 133 NW 2d 218, 1 Mich App 1 (1965)

> Under constitutional provisions that judges of courts of record shall not be elected or appointed to judicial office after reaching age of 70 years, age limitation applies to all judicial positions, even though they are not in court of record.

Stump v Sparkman, 435 U.S. 349 (1978)

> In determining whether an action is "judicial" we consider the nature of the act, and whether it is a function normally performed by a judge.

Mann v Conlin, 22 F3d 100 (1994), n6 and n9:

Judge is liable for money damages where judge acts in nonjudicial capacity or in complete absence of all jurisdiction (n6) Judge acts in clear absence of all jurisdiction and liable for money damages, when court of limited jurisdiction attempts to adjudicate case outside its jurisdiction. (n9)

Detroit Branch, NAACP v City of Dearborn, 434 NW 2d 444, 173 Mich App 602 (1988)

All seizures of persons, including those involving only brief detention, fall within protections afforded by this section and Fourth Amendment.

People v Heffron, 19 NW 170, 53 Mich 529

The complaint was made by a person with no personal knowledge of the case other than hearsay of unsworn witnesses whose reliability had not been proven, therefore the complaint was invalid.

People v Quinn, 356 NW 2d 10, 136 Mich App 145

Trial court has no authority to convict a defendant of an offense not specifically charged. Defendant may not be charged on basis of law alone; he must be informed of what he is supposed to have done.

Young v Duckworth, 733 F2d 482 (7th Circ. 1984)

Assistance of counsel, to be fully effective, must be continuous from time when prosecution began.

Brady v Maryland, 373 U.S. 83, 10 L Ed2d 215, 83 S Ct 1194 (1963)

Suppression of evidence favorable to the defendant violates the due process rights (Granddaddy case of "Brady decisions")

Edmond v Collins, 8 F3d 290 (5th Cir 1993) and ***U. S. v Brumel Alvarez,*** 976 F2d 1235 (9th Cir 1992) and all other "Brady" case law

The Brady doctrine requires the prosecution to produce exculpatory evidence and evidence useful for impeachment when requested to do so by defendant.

U. S. v Olin Corp., D.C.N.Y. 465 F Supp 1120 (1979)

In order to support a claim of discriminatory prosecution by defendants, Plaintiff must present facts tending to establish that it was the result of intentional and purposeful discrimination.

In re Attorney General, 341 NW 2d 253, 129 Mich App 128 (1983)

(2) Under statute allowing venue to be changed by a circuit court for "good cause shown" by either party, "good cause" concerns ability to obtain fair trial in county where action is brought, and convenience to parties and witnesses is not within meaning of the statute.

People v Plyler, 272 NW 2d 623 86 Mich App 272 ;and
"Fruit of the poisonous tree" doctrine seeks to discourage unlawful police practices by depriving the people of the advantage flowing from the "primary illegality" of police activity.

People v Tucker, 172 NW 2d 712, 19 Mich App 320 (1969)
The use of evidence proceeding from an illegal seizure are the fruits of the unlawful conduct, commonly known as the "fruit of the poisonous tree" and are totally inadmissible.

Maki v Laakko, 88 F3d 361 (6th Circ 1996) n7.5(1)
Plaintiff must show conspiracy between at least two persons, that object of conspiracy is to deprive plaintiff of equal protection of the law or of privileges and immunities under the law and injury to plaintiff as result of conspiracy.

Strength v Hubert, 854 F2d 241 (11th Circ 1988)
Freedom from malicious prosecution is a federal right protected by § 1983.

U.S. v Sneed, 34 F3d 1570 (10th Circ 1994)
Excessive government involvement occurs when governmental agency engineers and directs criminal enterprise from start to finish and defendant contributes nothing more than his presence and objections thereto.

Magna Carta of 1216:

King John: "We will make no men justices or sheriffs unless they are such that know the law of the realm, and are minded to observe it rightly."

Floyd and Barker, 77 Eng Rep (1305 Star Chamber, 1607):

Judicial immunity shall be absolute when the order of the justice is within his jurisdiction to perform.

English Declaration of Rights of 1689:

Whereas this Parliament deplores the illegality of the directed and arbitrary use of the sentencing power by the king's bench, we do hereby declare that judicial immunity shall not be absolute and then be effective only within the scope of jurisdiction.

Marbury v Madison, 5 US 137 (1803) (Cranch) Chief Justice Marshall

" ... a legislative act contrary to the constitution is not law ... then, the courts are to regard the constitution as superior to any ordinary act of the legislature; the constitution not such ordinary act must govern the case to which they both apply. It is apparent that the framers of the constitution contemplated that instrument to be a rule for the government of courts as well as the legislature...

a law repugnant to the constitution is void and that courts as well as other departments are bound by that instrument.

Mc Culloch v State, 17 US 316 (1819), Chief Justice Marshall:

> "The States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operations of the constitutional laws enacted by Congress ... The nullity of an act inconsistent with the Constitution, is produced by the declaration that THE CONSTITUTION IS THE SUPREME LAW."

Mayor, Aldermen and Commonalty of City of New York v George Miln, 36 US 102 (1837), Justice Barbour.

> "That a State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States."

Congress Globe, 39th Congress, First Session, the first Civil Rights Act passed Aprol 9, 1866 over veto by President Andrew Johnson's objection, who said:

> "The bill invades the judicial power of the States ... and judges of the State Courts and marshals and sheriffs, sanctioned by State laws and issued by state judges ... could be brought before other tribunals and there, subjected to fine and imprisonment for performance of their duties ..."

Representative Lawrence response:

"I answer, it is better to invade the judicial power of the State than permit it to invade, strike down and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded. The grievance would be insignificant."

Senator Trumbull:

"The notion of immunity for such judicial officials is thoroughly discredited. The idea of judicial immunity is akin to the maxim of the English law that 'the King can do no wrong' It places judicial officials above the law. It is the very doctrine out of which the rebellion (the Civil War) was hatched."

Congressional Globe, 42nd Congress , First Session (1871),

Representative Arthur:

"But if the Legislature enact a law, if the Governor enforces it, if the judge upon the bench renders a judgment, if the sheriff levy an execution, execute a writ, serve a summons, or make an arrest, all acting under a solemn official oath, though as pure in duty as a saint, and as immaculate as a seraph, for a mere error in judgment, they are liable."

Senator Shellabarger,Senate Judiciary Committee

"Section 1 of the **1871 Act** provides a civil remedy in identically the same case or on the same state of facts as the 1866 Act and obviously over-

rides whatever immunity may have existed at common law for the participants in the judicial process, in 1871. The basic words of "Every Person and all Persons" are used to intentionally include any judge that knowingly and willfully deprives any person of his Constitutional Rights under color of law ...."

Pierson v Ray, 386 U.S. 547 (1967),

Where a judge acts intentionally and knowingly, to deprive a person of his constitutional rights, he exercises no discretion or individual judgment, he acts no longer as a judge, but as a 'minister' of his own prejudices."

Maki v East Tawas, 188 NW 2d 593, 365 Mich 151 (1971)

"Provision of MCL 691.1407 making all governmental agencies, (Including judges) immune creates immunity for a much broader area.than was intended, creating immunity for acts of negligence and as such, is unconstitutional and invalid."

Jackson v City of Detroit, 192 NW 658, 35 Mich App 591 (1971)

"Provision of MCL 691.1407 purporting to make governmental agencies "immune from tort liability" is unconstitutional."

Hampton v Chicago, 484 F2d 602, 607 (CA7 1973) (J Stevens)

> "Conduct by persons acting under color of state law which is wrongful under 42 USC 1983 or 1985 cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise and the supremacy clause of the Constitution insures that the proper construction must be enforced.

Pittman v City of Taylor, 247 NW 2d 512, 398 Mich 41 (1976):

> "Governmental immunity from tort liability was judicially created and may be judicially abrogated. Courts are required to give effect to immunity unless statute, policy or activity violates the Constitution."

George D Owen v City of Independence, Missouri, et al, 485 U.S.622, 63 L Ed 2d 673, 100 S Ct. 1398 (1980):

> "A good faith defense recognized under **1983** authorizes liability only when officials acted with malicious intent or where they knew or should have known that their conduct violated the constitutional norm."

Anderson v Creighton, 483 U.S. 635 (1987):

> "... the contours of the right must be sufficiently

clear that a reasonable official would understand that what he is doing violates that right ... it is to say that in the light of pre-existing law, the unlawfulness must be apparent." (at 640)

Harlow v Fitzgerald, 457 U.S.800 (1982):

"Action for damages may offer the only realistic avenue for vindication of constitutional guarantees.

Malley v Briggs, 475 U.S.335 (1986):

"As a matter of public policy, qualified immunity provides ample protection to all but ... those who knowingly violate the law ...Given malice and the lack of probable cause, magistrate enjoyed no immunity. Common law thus affords no support "

Forrester v White, 484 U.S. 219 (1988):

"A State court judge does not have absolute immunity from a damage suit under 1983 for his decisions ... "

Mireles v Waco, 502 U.S. 9 (1991):

"A judge is not immune for actions, though judicial in nature, taken in the complete absence of jurisdiction.".

Hafer v Melo, 502 U.S. 21 (1991):

"Through 1983, Congress sought "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his

position" ... officials seeking absolute immunity must show that such immunity is justified by the governmental function at issue ... damage awards against individual defendants in federal courts are a permissible remedy in some circumstances. ...

Townsend v Hazdroth, 875 F Supp 1293 (E.D.Mich 1995) (Judge Gadola)

"Governmental immunity, under Michigan law, is an affirmative defense that defendants must prove."

Blanche Road Corp. v Bensalem Twp., 57 F3d, 253 (3rd Cir 1995)

"Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

Ireland v Tunis, 113 F.3d 1435 @ 1440 (6th Cir. 1997)

First, a judge is not immune from liability for non-judicial acts, i.e. actions not taken in the judge's judicial capacity. Second a judge is not immune for actions, taken in the complete absence of all jurisdiction.".

OAKLAND COUNTY JUDGES:

"I can do anything I choose to you and you can't touch me. I'm immune from claims."

Appendix C-23 .

(3)

Supreme Court, U.S.
FILED

99 610 JUL 29 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

CONSTANCE KRAJICEK,
Petitioner

v.

K. M. JUSTIN, JAMES SHEEHY,
DAVID BRECK, ROBERT TEMPLIN

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

SUPPLEMENTAL APPENDIX

Constance Krajicek
In Pro Se
P.O.Box 506
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1-810-319-6767

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE KRAJICEK, CIVIL ACTION 97-40489
Pleaintiff,

v. HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

K.M.JUSTIN, JAMES P. SHEEHY,
ROBERT TEMPLIN and DAVID BRECK
Defendants

_____/

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

On or about December 4, 1997, plaintiff Constance Krajicek, in pro per, filed the instant action against defendants K.M.Jistin, a state district court magistrate, James Pl 'Sheehy, a state district court judge, and Robert Templin and David Breck, state cidrcuit court judges. On December 23, 1997, defendants filed a motion to dismiss asserting that absolute immunity bars all plaintiff's claims. For the following reasons, defendants' motion will be granted.

I

Motion to Dismiss

In considering a motion to dismiss for failure to state a claim, the court must accept as true all factual allegations contained in the complaint, and must construe such allegations in a light most favorable to the plaintiff. **Meador v. Cabinet for**

Human Resources, 902 F.2d 474, 475 (6th Cir.). **cert. denied,** 498 U.S. 867 (1990). Motions to dismiss are disfavored and must be denied "unless it can be established beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." **Id. Guzinski v Hasselbach,** 920 F. Supp. 762, 764 (E.D. Mich 1996).

Absolute Immunity

A judge is generally immune from a suit for money damages. **Mireles v Waco**, 502 U.S. 9 (1991). This immunity extends to officials performing discretionary acts of a judicial nature, including magistrates as well as state judges sued on federal constitutional claims. **Pierson v. Ray,** 386 U.S. 547, 553-54 (1967); **King v. Myers**, 973 F.2d 354, 356 (4th Cir. 1992); **Hill v City of New York,** 45 F.3d 653, 660 (2nd Cir. 1995) (citing **Olivia v Heller,** 839 F.2d 37, 39 (2d Cir. 1988)). ([A] bsolute immunity is essential to safeguarding the integrity of the judicial process

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[and] it extends to those performing functions closely associated with that process." **Hill**, 45 F 3.3d at 660 (citing **Cleavinger v Saxner,** 474 U.S. 193, 200 (1985).

Immunity is not lost when a judge's action is in error or was in excess of his authority.**Stump v. Sparkman**, 435 U.S. 349, 359 **reh'g denied 436**, 436 U.S> 951 (1978); **Bradley v. Fisher,** 13 Wall. 335, 351 (1872). Rather, immunity will be lost in only two circumstances; (1) when the judge acts in a non-judicial capacity and (2) when the judge acts in complete absence of all jurisdiction. **Mann v. Conlin,** 22 F.3d 100, 103 (6th Cir.) **cert. denied**, 513 U.S.870 (1994)

Defendants Are Entitled to Judicial Immunity

Plaintiff's 116 paragraph complaint contains seven counts: four against defendant Sheehy and one against each of the remaining three defendants. Defendants argue that their alleged actions wich give rise to palintiff's claims are "paradigmatic judicial acts" (i.e., acts normally performed by a judge acting in his or her judicial capacity) which they had jurisdiction to takae and for which they are absolutely immune. Mindful that plaintiff is proceeding pro se, this court finds that the allegations pled in plaintiff's complaint do not give rise to viable claims against the

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defendants since defendants are judicially immune.

Plaintiff's allegations against defendant Justin are found at Count I of the Complaint. They include and concern his issuance of an arrest warrant and his incarceration of plaintiff i the same holding cell where plaintiff was allegedly assaulted by sheriff's deputies during a prior incarceration. Plaintiff claims that these actions amounted to a violation of her Fourth Amendment rights as well as an obstructuion of justice and a violation of defendant's oath of office.

This court finds that the alleged actions taken by defendant Justin in issuing the warrant and incarcerating plaintiff are of the type traditionally performed by judges. Furthermore, defendant Justin had jurisdiction to take such actions. Michigan Compiled Laws Annotated 600.8511 states in part:

> A district court magistrate shall have the following jurisdiction and duties:
> (B) To issue warrants for the arrest of a person upon the written authorization of tghe prosecuting or municipal attorney, except written authorization

shall not be required for a vehicle law or ordinance violation within the jurisdiction of the magistrate if a police officer issued a traffic citation pursuant to section 728 of the of the Public Acts of 1949, as amended, be ing section 257.728 of the Michigan Compiled Laws, and the defendant failed to appear. (C) To fix bail and accept bond in all cases.

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Since all of the alleged actions of defendant Justin which give rise to plaintiff's claims were "judicial acts" and since defendant Justin was not without jurisdiction to take them, defendant Justin is "robed" with judicial immunity for them. Plaintiff's claims againwst defendant Justin must be dismissed.

The allegations against defendant Templin are that: (1) he did not consider the "written presentation" of the plaintiff and only permitted plaintiff to speak at a hearing on October 29, 1997 concerning an appeal from a district court ruling and (2) he denied said appeal and upheld a ruling of Judge Sheehy. **See** Count IV. Plantiff claims that these alleged acts of defendant Templin constitute a violation of: (1) defendant's oath of office. (2) plaintiff's rights guaranteed him by the Constitution of the United States of America, and particularly Article VI and the Fourth and Sixth Aamendments, (3) plaintiff's rights under the Michigan Vehicle Code, (4) 42 U.S.C. §§1983 and 1985, and (5) 18 U.S.C. §§ 241* and 242.

All the aforementioned alleged acts of defendant Templin are undeniably ***"judicial*** acts" Moreover, defendant Templin did not take these alleged actions in the "clear absence

*Certainly, 18 U.S.C. §241 does not provide a basis for civil liability as it is a criminal statute. Willing v Lake Orion Community Schools Board of Trustees, 924 F.Supp 815 (E.D.Mich 1996)

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jurisdiction." Michigan Compiled Laws Annotated §600.8342 (1) allows circuit judges for the county in which the judgment is rendered to hear appeals from the district court. Plaintiff's claims against defendant Templin must be dismissed since defendant Templin is entitled to immunity for them.

The allegations against defendant Breck are that defendant Breck was assigned plaintiff's appeal from the district court and that in handling that appeal he: (1) failed to consider plaintiff's written presentation and considered only the prosecutor's verbal presentation even though the prosecutor had not responded in writing, and (2) denied plaintiff's appeal. **See** Count VI. Plaintiff that such actions violated (1) defendant's oath of office, (2) plaintiff's rights guaranteed him by the Constitution of the United States of America, and particularly Article VI and the Fourth and Sixth Aamendments, (3) plaintiff's rights under the Michigan Vehicle Code, (4) 42 U.S.C. §§ 1983 and 1985, and (5) 18.U.S.C. §§ 241 and 242.

This court finds that all the alleged actions of defendant Breck which give rise to plaintiff's claims were judicial acts concerning matters over which defendant Breck properly had jurisdiction pursuant to M.C.L.A. §600.8341(1). As such, defendant Breck is absolutely immune from all of plaintiff's claims against him.

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The allegations against Judge Sheehy are contained at Counts II, III, V and VII of plaintiff's complaint. Specifically, Count II alleges that defendant did not allow plaintiff a jury trial on a patter pending before the court and did not adjourn a particular matter despite plaintiff's claim that she did not receive timely notice. Count III alleges that defendant Sheehy, during a hearing regarding a traffic citation, denied plaitiff's request for

a jury trial, refused to order a witness to answer questions and improperly ap- plied the Michigan Vehicle Code in finding her responsible for improper passing. County V relates to defendant's alleged actions during the prose- cution of the warrant issued by defendant Justin. With regard to this proceeding involving the plaintiff, defendant allegedly: (1) denied plaintiff's motion for a bill of particulars, (2) denied plaintiff's motion to quash the arrest warrant, (3) denied plaintiff's motion for a change of venue, (4) denied plaintiff's motion to strtike the prosecutor/s reply, (5) refused to hear plaintiff's motion for stipulations, (6) denied plaintiff's motion for a court appointed attorney, and (7) refused to dismiss the demand for reevaluation of plaintiff as a driver. Count VII pertains to defendant Sheehy's alleged mishandling of a criminal case after it was remanded by the Michigan Court of Appeals to

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the district cout. Plaintiff alleges that defendant Sheehy should have refused to proceed with a new trial since thee was a 209 day delay from the time the case was transferred from the Michigan Court of Appeals to the district court. Plaintiff alleges that all these actions wre taken in contravention of Article IV, and the Sixth and Seventh Amendments of the Constitution of the United States of America, as well as defendant's oath of office, Michigan law, 42 U.S.C. §§ 1983 and 1985 and 18 U.S.C. §§ 241 and 242.

In this court's opinion, defendant Sheehy is entitled to absolute immunity for all of the alleged actions comprising plaintiff's claims. The alleged actions are all "judicial" actions. Firthermore, at the time the actions were taken, defendant Sheehy was well within his statutory jurisdiction pursuant to M.C.L.A. §§ 600.8301 and 600.8302. Section 600.8301 grants

district court judges exclusive jurisdiction in civil actions ($25,000.00 maximun) and over civil infraction actions and Section 600.8302 endows district court judges with equitable jurisdiction and other authority.

The gist of plaintiff's response in opposition to defendants' motion to dismiss is that defendants are not entitled to immunity because their actions were erroneous.

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The Supreme Court rejected a similar argument in **Mireles v Waco**, 502 U.S. 9, 12-13 (1991) when it stated that (1) if judicial immunity means anything at all, it means that a judge 'will not be deprived of immunity because the action he took was in error ..... or was in excess of his authority' citing **Stump v Sparkman**, 435 U.S. 349 (1978). Accordingly, this court rejects plaintiff's argument here.

ORDER

IT IS HREBY ORDERED that defendants' motion to dismiss pursuand to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED. SO ORDERED.**

Dated:_____

S/s Paul V. Gadola
PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTANCE KRAJICEK, CIVIL ACTION 97-40489
Plaintiff,

v. HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

K.M.JUSTIN, JAMES PL SHEEHY,
ROBERT TEMPLIN and DAVID BRECK,
Defendants
_____/

JUDGMENT

This action came before the court, Honorable Paul V. Gadola, District Judge, presiding, and the issues having been duly reviewed and a decision having been duly rendered.

IT IS ORDERED AND ADJUDGED that judgment be entered for the defendants, that plaintiff take nothing and that the action be dismissed.

It is further **ORDERED** that the clerk serve a copy of the judgment by United States mail on the counsel for plaintiff

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and on counsel for defendants.

Dated at Flint, Michigan this 27th day of Jan., 1998.

APPROVED; JOHN P. MAYER;

s/s Paul V. Gadola By: s/s Susan Daly
PAUL V. GADOLA Deputy Clerk
UNITED STATES DISTRICT JUDGE

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